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9 Attorneys for Plaintiffs  
10 Penthouse Global Media, Inc. and General  
11 Media Communications, Inc.

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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

12 PENTHOUSE GLOBAL MEDIA,  
13 INC., a Delaware corporation,  
14 GENERAL MEDIA  
15 COMMUNICATIONS, INC., a New  
16 York corporation,

17 Plaintiffs,

18 v.

19 GUCCIONE COLLECTION, LLC, a  
20 Delaware limited liability company,  
21 JEREMY FROMMER, an individual,  
22 RICK SCHWARTZ, an individual,  
23 JERRICK MEDIA HOLDINGS, INC.,  
24 a Nevada corporation, JERRICK  
25 VENTURES, INC., a Nevada  
26 corporation, JERRICK VENTURES  
27 LLC, and DOES 1-10, inclusive,

28 Defendants.

Case No. 2:17-CV-04980-PA (FFMx)

**SECOND AMENDED COMPLAINT  
FOR: (1) COPYRIGHT  
INFRINGEMENT; (2) TRADEMARK  
INFRINGEMENT (3) FALSE  
DESIGNATION OF ORIGIN; (4)  
TRADEMARK DILUTION; (5)  
COMMON LAW TRADEMARK  
INFRINGEMENT; (6) COMMON  
LAW UNFAIR COMPETITION; (7)  
UNFAIR COMPETITION; (8)  
TRADEMARK DILUTION; (9)  
DECLARATORY RELIEF; (10)  
FALSE ADVERTISING; AND (11)  
UNJUST ENRICHMENT**

**DEMAND FOR JURY TRIAL**

25 Plaintiffs PENTHOUSE GLOBAL MEDIA, INC. and GENERAL MEDIA  
26 COMMUNICATIONS, INC. (collectively, "Penthouse") hereby complain against  
27 defendants GUCCIONE COLLECTION, LLC, JEREMY FROMMER, RICK  
28 SCHWARTZ, JERRICK MEDIA HOLDINGS, INC., JERRICK VENTURES,

1 INC., JERRICK VENTURES LLC, and DOES 1-10 (collectively, "Defendants")  
2 and alleges as follows:

3 **PARTIES**

4 1. Plaintiff Penthouse Global Media, Inc. ("Penthouse Global Media") is a  
5 Delaware corporation with its principal place of business in Chatsworth, California.

6 2. Plaintiff General Media Communications, Inc. ("General Media") is a  
7 New York corporation with its principal place of business in Chatsworth, California.

8 3. Penthouse is informed and believes that Guccione Collection, LLC, is a  
9 limited liability company organized under the laws of the State of Delaware, with its  
10 principal place of business located in New Jersey.

11 4. Penthouse is informed and believes that Defendant Jeremy Frommer is  
12 a citizen of the United States currently residing in New Jersey, and is the Chief  
13 Executive Officer of Jerrick Ventures, Inc. and Jerrick Media Holdings, Inc.; a  
14 member of Jerrick Ventures, LLC; and a principal of Guccione Collection, LLC.

15 5. Penthouse is informed and believes that Rick Schwartz is a citizen of  
16 the United States currently residing in New York, and is the President of Jerrick  
17 Media Holdings, Inc., and a member of Jerrick Ventures, LLC.

18 6. Penthouse is informed and believes that Defendant Jerrick Media  
19 Holdings, Inc. is a technology and digital media company distributes media content  
20 through its portfolio of brands, incorporated under the laws of the state of Nevada,  
21 with its principal place of business in Englewood, New Jersey.

22 7. Penthouse is informed and believes that Defendant Jerrick Ventures,  
23 Inc. is a digital media holding company founded in 2013, incorporated in Nevada,  
24 with its principal place of business in New Jersey.

25 8. Penthouse is informed and believes that Defendant Jerrick Ventures,  
26 LLC, is a subsidiary of Defendant Jerrick Media Holdings, Inc., with its principal  
27 place of business in New Jersey.

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1           9.     Penthouse is informed and believes that Defendants Does 1 through 10,  
 2 inclusive, are improperly using Plaintiffs' property. The true names, whether  
 3 corporate, individual, or otherwise of Does 1 through 10, inclusive, are presently  
 4 unknown to Penthouse and, therefore, these Does are being sued by fictitious names,  
 5 and Penthouse will seek leave to amend this Complaint to include the true names  
 6 and capacities when the same have been ascertained.

7           10.    Penthouse is informed and believes that at all times relevant to this  
 8 action, each of the Defendants was the agent, affiliate, officer, director, manager,  
 9 member, principal, alter-ego, and/or employee of the other Defendant and was at all  
 10 times acting within the scope of such agency, affiliation, alter-ego relationship  
 11 and/or employment, and actively participated in or subsequently ratified and  
 12 adopted, or both, each and all of the acts or conduct alleged herein with full  
 13 knowledge of each and every violation of Penthouse's rights and the damages to  
 14 Penthouse proximately caused thereby.

### 15                   **JURISDICTION AND VENUE**

16           11.    This Court has subject matter jurisdiction over the claims alleged by  
 17 Penthouse because their claims arise under the Copyright Act, 17 U.S.C. §§ 101, *et*  
 18 *seq.*, and the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*, and jurisdiction is conferred  
 19 by 28 U.S.C. § 1331 and 1338 (a) and (b).

20           12.    This Court has specific personal jurisdiction over the Defendants  
 21 because in intentionally and willfully advertising, selling and renting the motion  
 22 picture *Caligula* worldwide and to California residents on [www.vimeo.com](http://www.vimeo.com), and  
 23 using Penthouse's *Caligula* copyrights and trademarks to do so, and infringing on the  
 24 registered OMNI trademark and copyrights by operating the <https://omni.media>  
 25 website and posting infringing material on [www.youtube.com](http://www.youtube.com) and other websites,  
 26 all of which Defendants knew would cause harm to Penthouse in California, given  
 27 that Penthouse notified Defendants of Penthouse's superior rights to the *Caligula*  
 28 copyrights and trademarks as far back as September 2013. Defendants also knew

1 that their conduct would cause harm to the registrant of the OMNI trademarks and  
2 copyrights worldwide. In so doing, they have purposefully availed themselves of  
3 the privilege of conducting activities in this forum, thereby invoking the benefits  
4 and protections of its laws. Venue is also properly laid in this district under 28  
5 U.S.C. § 1391(b)(3) due to the Court's personal jurisdiction over the Defendants in  
6 this action.

### 7 **FACTUAL BACKGROUND**

8 13. Bob Guccione was the founder, owner and publisher of *Penthouse*  
9 Magazine and the founder of the iconic Penthouse brand. In 1979, Mr. Guccione  
10 produced a motion picture titled *Caligula*, which is now a cult classic that blends  
11 ancient Roman history with erotica and stars luminaries including Helen Mirren and  
12 Peter O'Toole. Mr. Guccione died in 2010.

13 14. General Media was the original publisher and owner of the *Penthouse*  
14 Magazine and the owner of the famous PENTHOUSE trademarks, as well as  
15 CALIGULA trademarks, including those pending registration by the United States  
16 Patent and Trademark Office under Serial Nos. 87284418 and 86803795 (the  
17 "CALIGULA Marks").

18 15. In 2012, Defendant Jeremy Frommer purchased at auction the contents  
19 of a storage facility in Englewood, New Jersey. Included in this storage facility  
20 were numerous examples of the erotic photography for which Mr. Guccione was  
21 famous, as well as films, magazines, artwork, and documents of historical, business  
22 and legal significance associated with the PENTHOUSE brand, including archival  
23 material, physical editions, photographs and illustrations from Guccione's OMNI  
24 magazine, and possibly including items relating to the *Caligula* motion picture.

25 16. In November 2012, Mr. Frommer also purchased all of the rights to the  
26 items belonging to Mr. Guccione that had come into the possession of an individual  
27 named James C. Sell, who had obtained a judgment against Mr. Guccione in  
28 Arizona. Thereafter, Mr. Frommer assigned all of the purchased property to a newly

1 formed entity, Guccione Collection LLC ("GC"). Mr. Frommer then began offering  
2 the purchased items for sale through a website.

3 CALIGULA

4 17. On or about September 17, 2013, General Media sent a letter to GC and  
5 Jeremy Frommer notifying them that GC's website infringed upon its copyrights and  
6 trademarks by, among other things, offering the *Caligula* motion picture for viewing  
7 by the public for a fee. General Media demanded that GC and Frommer cease and  
8 desist from using the CALIGULA Marks and copyright protected material on their  
9 website.

10 18. Also on or about September 17, 2013, General Media sent a takedown  
11 notice to the domain manager and host demanding that the infringing material be  
12 taken down from Frommer's and GC's website. The domain host took down GC's  
13 website.

14 19. On September 25, 2013, GC filed a Complaint for Declaratory and  
15 Other Relief in the case of *In re PMGI Holdings Inc.*, United States Bankruptcy  
16 Court for the District of Delaware Case No. 13-52259-CSS, in which it sought a  
17 judicial declaration that it was not infringing on any intellectual property rights,  
18 including in the motion picture *Caligula*, based on its purchase of the personal  
19 property of Mr. Guccione at auction and from Mr. Sell. On October 25, 2013,  
20 General Media filed an answer and counterclaim against GC. Both the complaint  
21 and the counterclaim were later mutually dismissed without prejudice and with no  
22 rulings on the merits of any of the claims or counterclaims.

23 20. Penthouse Global Media is the successor to and parent owner of the  
24 PENTHOUSE brand associated with *Penthouse* Magazine and related merchandise  
25 and services. In 2016, Penthouse Global Media acquired General Media and all of  
26 its assets associated with the PENTHOUSE brand, including all of the copyrights  
27 associated with the motion picture *Caligula*. . However, General Media remains the  
28 registered owner of the pending CALIGULA trademark registrations (Serial Nos.

1 86803795 and 87284418), and it continues to own the common law CALIGULA  
 2 trademarks, as well as the Omni Copyrights defined below. At no time has  
 3 Penthouse or any affiliated entity ever transferred or licensed any of its copyrights,  
 4 trademarks, or other intellectual property to any of the Defendants for any purpose.

5 21. Despite having being informed of its infringement of intellectual  
 6 property rights protecting *Caligula*, Defendants have willfully and blatantly  
 7 continued their unauthorized copying, distribution, sale and other use of Penthouse's  
 8 intellectual property. More specifically, on or about May 8, 2017, Penthouse  
 9 discovered that Defendants were offering the motion picture *Caligula* to the public  
 10 for sale or rental on the website [www.vimeo.com](http://www.vimeo.com) ("Vimeo.com").

11 22. Defendants also used the CALIGULA Marks on Vimeo.com to  
 12 advertise the sale and rental of the *Caligula* motion picture, in a manner that is likely  
 13 to cause confusion as to the source of the motion picture, in that Defendants  
 14 describe it as "Bob Guccione's Caligula" and state:

15  
 16 Bob Guccione's Caligula is a 1979 erotic historical drama film  
 17 focusing on the rise and fall of the Roman Emperor Caligula. Starring  
 18 Malcolm McDowell, Teresa Ann Savoy, Helen Mirren, Peter O'Toole,  
 19 John Steiner and John Gielgud. Caligula is the only feature film  
 20 produced by Bob Guccione, founder of Penthouse and OMNI  
 21 magazines. Guccione cast Penthouse Pets as extras.

22 A unique film of its time, Caligula is the first to feature explicit  
 23 pornographic content mixed with high production values and a  
 24 cohesive narrative. Caligula's release was controversial and met with  
 25 legal issues and controversies over its portrayal of violent and sexual  
 26 content. The uncut version of Caligula is banned in several countries.

27 OMNI

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1           23. Bob Guccione was also one of the founders and the publisher of the  
2 science and science fiction magazine OMNI, which was first published in 1978 as a  
3 print magazine, and debuted as an online magazine in 1986, and utilized a logo  
4 consisting of the word OMNI in stylized font. Through his use of the OMNI mark  
5 and logo in commerce to identify the source of the OMNI magazine, Guccione  
6 acquired common law trademarks in the word and the logo.

7           24. Mr. Guccione published the OMNI magazines through the corporate  
8 entity Omni Publications International, Ltd. ("Omni Publications"). Omni  
9 Publications was the original registered author or co-author of all of the OMNI  
10 magazines and the owner, or one of the co-owners, of the copyright on the entire  
11 series of OMNI magazines (United States Copyright Office Registration No.  
12 CSN0012725), as well as the individual registrations on each of 197 individual  
13 OMNI magazines bearing Registration Numbers: TX0003991856, TX0004003252,  
14 TX0004020739, TX0004175916, TX0004269144, TX0003798785, TX0003775298,  
15 TX0003724378, TX0003835334, TX0003724590, TX0003847056, TX0003906046,  
16 TX0003907477, TX0003959999, TX0003938941, TX0003973417, TX0004018218,  
17 TX0003468820, TX0003544448, TX0003524892, TX0003561636, TX0003597140,  
18 TX0003620244, TX0003641732, TX0003641731, TX0003694283, TX0003681212,  
19 TX0003773673, TX0003246538, TX0003250764, TX0003300687, TX0003304449,  
20 TX0003329912, TX0003351964, TX0003446042, TX0003388380, TX0003420400,  
21 TX0003420167, TX0003449685, TX0003468834, TX0003019904, TX0002994617,  
22 TX0003039147, TX0003039148, TX0003065071, TX0003071648, TX0003090328,  
23 TX0003117665, TX0003142895, TX0003195915, TX0003203223, TX0003202401,  
24 TX0003217797, TX0002821818, TX0002821817, TX0002833027, TX0002833023,  
25 TX0002888894, TX0002904815, TX0002904816, TX0002958017, TX0002958016,  
26 TX0002958015, TX0002957506, TX0002507961, TX0002507965, TX0002586758,  
27 TX0002586761, TX0002620337, TX0002620343, TX0002620336, TX0003210277,  
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1 TX0003210268, TX0002795028, TX0002795052, TX0002795062, TX0002239341,  
2 TX0002259840, TX0002368705, TX0002368687, TX0002368623, TX0002368652,  
3 TX0002368651, TX0002403752, TX0002403750, TX0002507997, TX0002507988,  
4 TX0002507999, TX0002034678, TX0002112384, TX0002112393, TX0002103462,  
5 TX0002103461, TX0002154030, TX0002146343, TX0002146434, TX0002146344,  
6 TX0002210969, TX0002239278, TX0002239339, TX0001806814, TX0001806586,  
7 TX0001858436, TX0001858445, TX0001890566, TX0001944948, TX0001944947,  
8 TX0001947041, TX0001975391, TX0001962351, TX0002112374, TX0001589736,  
9 TX0001589697, TX0001589696, TX0001630455, TX0001619442, TX0001719293,  
10 TX0001719295, TX0001676950, TX0001720095, TX0001779648, TX0001779638,  
11 TX0001806500, TX0001325951, TX0001589725, TX0001371820, TX0001405330,  
12 TX0001405328, TX0001405329, TX0001440323, TX0001473554, TX0001589726,  
13 TX0001485321, TX0001485320, TX0001473654, TX0001589735, TX0001108018,  
14 TX0001108015, TX0001108014, TX0001108017, TX0001189900, TX0001204571,  
15 TX0001189907, TX0001589737, TX0001248663, TX0001345918, TX0001589738,  
16 TX0001345917, TX0001589733, TX0001325950, TX0000870107, TX0000901230,  
17 TX0000901235, TX0000951003, TX0000936617, TX0000963053, TX0000997001,  
18 TX0001009186, TX0001104113, TX0001013993, TX0001104114, TX0001108016,  
19 TX0000650166, TX0000650165, TX0000681436, TX0000715395, TX0000769291,  
20 TX0000723411, TX0000739020, TX0000901237, TX0000791548, TX0000842305,  
21 TX0000826931, TX0000870103, TX0000407003, TX0000453221, TX0000453193,  
22 TX0000460660, TX0000486318, TX0000511667, TX0000530009, TX0000547913,  
23 TX0000556587, TX0000591313, TX0000590389, TX0000655381, TX0000186081,  
24 TX0000229198, TX0000307161, TX0000260189, TX0000265181, TX0000276037,  
25 TX0000328427, TX0000396934, TX0000369822, TX0000397539, and  
26 TX0000395984 (the "Omni Copyrights").  
27  
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1           25. On January 16, 2007, Omni Publications was merged into General  
2 Media International, Inc. By February 24, 1995, General Media International, Inc.,  
3 had become Penthouse International Ltd., as evidenced by a Certificate of Change  
4 filed with the Secretary of the State of New York. On October 2, 1995, Penthouse  
5 International, Ltd., changed its name to General Media Communications, Inc. As a  
6 result of the mergers and the name change, all of the Omni Copyrights became the  
7 property of General Media effective no later than January 16, 2007. On August 10,  
8 2017, General Media submitted a Memorandum of Copyright Transfer to the United  
9 States Copyright Office for recording. General Media remains the current owner of  
10 the Omni Copyrights as reflected in the recorded Memorandum of Copyright  
11 Transfer.

12           26. Penthouse Global Media is the successor to, assignee and current owner  
13 of the common law OMNI trademarks and the United States trademark registrations  
14 and trademark application for the OMNI trademark, including Registration No.  
15 4932689 for magazines of science fact, fiction and fantasy, Registration No.  
16 4964743 for an internet website featuring electronic publications in the fields of  
17 science fiction, science fact, fantasy and futurism, and Serial No. 86002052, as well  
18 as international registrations (collectively, the "OMNI Marks"), and all of the  
19 goodwill associated with the OMNI Marks.

20           27. Despite the fact that an application for registration of the OMNI Marks  
21 in connection with magazines had already been filed with the USPTO by  
22 Penthouse's predecessor in interest, signaling to the world that the OMNI Marks  
23 were not available for use by Defendants, in 2013, Defendants Frommer and  
24 Schwartz again willfully and blatantly disregarded the intellectual property rights of  
25 others and began planning to publish an online science and science fiction magazine  
26 using the OMNI Marks and to republish and sell archival material from the original  
27 OMNI magazine protected by the Omni Copyrights.

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1           28. On or about June 27, 2013, Defendant Jerrick Ventures, LLC filed an  
2 application for registration of the purported trademark OMNI REBOOT (Serial No.  
3 85,972,230), which registration was refused by the United States Patent and  
4 Trademark Office because of a likelihood of confusion with a registered OMNI  
5 Mark. On or about May 31, 2016, Jerrick Ventures, LLC filed a cancellation  
6 proceeding before the Trademark Trial and Appeal Board ("TTAB") seeking to  
7 cancel the OMNI Mark (Cancellation No. 92063829). Because Penthouse General  
8 Media seeks a declaration in the present action that its registered OMNI Marks are  
9 valid and should not be cancelled, it has moved to have the cancellation proceeding  
10 before the TTAB suspended pending the judgment in this action.

11           29. Despite knowing of the existence of the registered OMNI Marks, and  
12 despite being denied registration of Omni Reboot, Defendants nonetheless  
13 proceeded to willfully and blatantly infringe on the OMNI Marks and Omni  
14 Copyrights by operating an online magazine at <https://omni.media>, which it refers to  
15 as OMNI Reboot, that not only uses the OMNI Marks in connection with the  
16 publication of an online magazine featuring science and science fiction topics, but  
17 also contains archival material from the original OMNI magazine, including  
18 magazine articles and reproductions of OMNI magazine covers, all without the  
19 permission or consent of Penthouse. Defendants also reproduced, published, offered  
20 for sale, and sold electronic copies of the Omni magazines on the website  
21 [www.amazon.com](http://www.amazon.com) for viewing on Amazon's Kindle products, and has continued to  
22 post them on various websites even during the pendency of this action, including  
23 [www.vimeo.com](http://www.vimeo.com) and likely others that will continue to be discovered during the  
24 course of the litigation.

25           30. Defendants have issued various press releases to advertise and attract  
26 consumer attention to their activities using the OMNI Marks and selling electronic  
27 copies of the magazines protected by the Omni Copyrights. For example, on or  
28 about September 12, 2016, Defendant Jerrick Media Holdings, Inc. released a press

1 release stating, among other things, that: "Jerrick has released a three part series of  
 2 science fiction stories available for digital download, entitled OMNI Best of Science  
 3 Fiction One, Two, and Three. Content from the series is featured on Jerrick Media's  
 4 brand OMNI, born from the science fiction magazine of the 1970s, 80s, and 90s,  
 5 created by Bob Guccione." On or about May 30, 2017, Jerrick Media Holdings, Inc.  
 6 issued a press release stating that it had "announced today the launch of *The Omni*  
 7 *Archive*...[that] features every issue of the seminal science fiction publication  
 8 *Omni*" and that "Omni Magazine was an award-winning science fiction  
 9 magazine...[c]reated by publishing mogul Bob Guccione." The press release further  
 10 advertised that "all 200 issues of the published magazines are available for viewing  
 11 and purchase on Amazon.... This is the first time the collection has been available  
 12 for digital download in high-resolution."

13 31. Various media outlets have republished information released by  
 14 Defendants. For example, on or about June 26, 2017, Variety magazine online  
 15 ([www.variety.com](http://www.variety.com)) reported that Defendant Jerrick Media had partnered with Jared  
 16 Leto and Paradox LLC to produce original content using the OMNI Marks.  
 17 Similarly, [www.pagesix.com](http://www.pagesix.com) reported that Jared Leto had partnered with Defendant  
 18 Rick Schwartz to develop a futuristic television anthology under the OMNI Marks.  
 19 Defendants' dissemination of such information to the media reflects their ongoing  
 20 and blatant disregard for the intellectual property rights of Penthouse and their  
 21 manifest intent to capitalize on those rights for their own gain.

22 32. On or about July 26, 2017, Penthouse discovered that Defendants were  
 23 advertising their exploitation of the OMNI Marks and Omni Copyrights on the  
 24 YouTube, LLC website at:

25 [https://www.youtube.com/channel/UCRetf\\_M4Qc0WLG06PPCJ\\_Pg](https://www.youtube.com/channel/UCRetf_M4Qc0WLG06PPCJ_Pg).

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**FIRST CLAIM FOR RELIEF**

(Copyright Infringement)

33. Penthouse incorporates the allegations of each foregoing paragraph as though fully set forth herein.

34. Penthouse Global Media is the owner of the following registered copyrights relating to the motion picture *Caligula*:

a. Registration No. TX0000204514 (created in 1978 and registered in 1979): *Gore Vidal's Caligula* (novel);

b. Registration No. PA0000083587 (created in 1979 and registered in 1980): *Caligula / a Penthouse Films International and Felix Cinematografica, S.R.L. production; a Bob Guccione, Franco Rossellini Production* (motion picture);

c. Registration No. PA0000449630 (1990 supplement to Registration No. PA0000083587): *Caligula By Felix Cinematografica* (motion picture); and

d. Registration No. PA0001737842 (created in 2007 and registered in 2009): *Caligula: The Imperial Edition* (motion picture *Caligula* with alternate pre-release version, *The Making of Caligula* documentary, audio commentaries, video interviews, deleted scenes, alternate scenes, behind the scenes footage, set photos, packaging text and artwork).

35. Defendants have had access to the motion picture *Caligula* through its widespread distribution since its creation in 1979, as well as through the purchase by Mr. Frommer of various items of Mr. Guccione's memorabilia. Defendant GC's access to the motion picture *Caligula* was admitted in its complaint for declaratory relief filed on September 25, 2013, in the case of *In re PMGI Holdings Inc.*, United States Bankruptcy Court for the District of Delaware Case No. 13-52259-CSS, in which it sought a judicial declaration that it was not infringing on any intellectual property rights, including in the motion picture *Caligula*.

1        36. Defendants recently have made a copy of the motion picture *Caligula*  
2 available to the public for purchase or rental on Vimeo.com.

3        37. General Media is the owner of the Omni Copyrights. Defendants have  
4 been copying, reproducing, selling, distributing, and making works derivative of the  
5 magazines protected by the Omni Copyrights, including without limitation, on the  
6 websites [www.youtube.com](http://www.youtube.com), <https://omni.media>, and [www.amazon.com](http://www.amazon.com).

7        38. Penthouse has never transferred or licensed any interest in any  
8 copyrights in *Caligula* or any of the Omni Copyrights to any of the Defendants,  
9 either in writing or otherwise, and has not consented to Defendants' reproduction,  
10 publication, distribution and sale of the motion picture *Caligula* or the Omni  
11 magazines.

12        39. Defendants' unauthorized reproduction, publication, distribution and  
13 sale of the motion picture *Caligula* and the Omni magazines constitutes  
14 infringement of Penthouse's registered copyrights in violation of the Copyright Act,  
15 17 U.S.C. §§ 101, *et seq.*

16        40. Penthouse is informed and believes, and based thereon alleges, that  
17 Defendants' copying, distribution and sale of the motion picture *Caligula* and the  
18 Omni magazines, after being informed of Penthouse's copyrights, was deliberate,  
19 willful, malicious, oppressive, and in manifest disregard of Penthouse's proprietary  
20 rights.

21        41. Defendants' willful copyright infringement has caused, and will  
22 continue to cause, Penthouse to suffer substantial injuries, loss, and damage to its  
23 proprietary and exclusive rights to the motion picture *Caligula* and the Omni  
24 magazines and further has damaged Penthouse's business reputation and goodwill,  
25 diverted their trade, and caused loss of profits, all in an as-yet undetermined  
26 amount. Penthouse is entitled to compensatory damages, as well as the profits  
27 earned by Defendants as a result of their infringement pursuant to 17 U.S.C. § 504.  
28

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2 42. Defendants' copyright infringement, and the threat of continuing  
3 infringement, have caused and will continue to cause Penthouse repeated and  
4 irreparable injury. It would be difficult to ascertain the amount of money damages  
5 that would afford Penthouse complete relief at law for Defendants' acts and  
6 continuing acts. Penthouse's remedy at law is not adequate to compensate it for the  
7 injuries already inflicted and further threatened. Therefore, Penthouse is entitled to  
8 preliminary and permanent injunctive relief pursuant to 17 U.S.C. § 502.

9 43. Penthouse is also entitled to recover its attorneys' fees and costs of suit  
10 pursuant to 17 U.S.C. § 505.

11 **SECOND CLAIM FOR RELIEF**

12 (Infringement of Registered Trademarks Under 15 U.S.C. § 1114)

13 44. Penthouse incorporates the allegations of each foregoing paragraph as  
14 though fully set forth herein.

15 45. General Media is the owner of the CALIGULA Marks.

16 46. Penthouse Global Media is the owner of the registered OMNI Marks,  
17 including Registration No. 4932689 for magazines of science fact, fiction and  
18 fantasy, Registration No. 4964743 for an internet website featuring electronic  
19 publications in the fields of science fiction, science fact, fantasy and futurism.

20 47. Defendants are using or have used the CALIGULA Marks in  
21 commerce in connection with the marketing, distribution and sale of the *Caligula*  
22 motion picture in various media, including on Vimeo.com. Defendants are using the  
23 OMNI Marks in commerce in connection with their online science and science  
24 fiction magazine and sales of OMNI magazines and related goods.

25 48. Defendants never sought or received Penthouse's authorization to use  
26 the CALIGULA or OMNI Marks for any purpose.

27 49. Defendants' use of the CALIGULA and OMNI Marks is likely to cause  
28 and/or has actually caused confusion in the marketplace by creating the false and



1 mistaken impression that Defendants' distribution and sale of the *Caligula* motion  
2 picture and/or publication of an OMNI online magazine and related activities are  
3 affiliated, connected or associated with Penthouse, or that they originate with, or are  
4 sponsored or approved by Penthouse.

5 50. Penthouse is informed and believes, and based thereon alleges, that  
6 Defendants' purpose in using the CALIGULA and OMNI Marks was and is to  
7 deceive, mislead and confuse customers and the public into believing that  
8 Defendants' activities are affiliated, connected or associated with Penthouse, or that  
9 they originate with, or are sponsored or approved by Penthouse, and to trade on the  
10 substantial and historical fame, notoriety, reputation and goodwill associated with  
11 the CALIGULA and OMNI Marks.

12 51. Defendants' use of the CALIGULA and OMNI Marks violates the  
13 Lanham Act, 15 U.S.C. § 1114. Defendants' use of the CALIGULA and OMNI  
14 Marks also falls within the definition of a counterfeit mark set forth in the Lanham  
15 Act, 15 U.S.C. § 1116(d).

16 52. Defendants' use of the CALIGULA and OMNI Marks has caused and,  
17 if not enjoined, will continue to cause, irreparable and continuing harm to Penthouse  
18 in the diminution of value and goodwill of the CALIGULA and OMNI Marks, and  
19 in their impairment to serve as trademarks, for which Penthouse has no adequate  
20 legal remedy. Accordingly, Penthouse is entitled to provisional, preliminary and  
21 permanent injunctive relief to compel cessation of all infringing and otherwise  
22 harmful conduct.

23 53. As a direct and proximate result of Defendants' wrongful conduct,  
24 Penthouse has been and will continue to be damaged by, without limitation, loss of  
25 profit, and diminution in the value of the CALIGULA and OMNI Marks and in its  
26 reputation and goodwill, in an amount to be proven at trial.

27 54. Defendants' wrongful use of the CALIGULA and OMNI Marks was  
28 and continues to be knowing, deliberate, willful, fraudulent, and without extenuating

1 circumstances. Because Defendants are intentionally, knowingly, and willfully  
2 using counterfeits of the registered CALIGULA and OMNI Marks, Penthouse is  
3 entitled to recover three times the amount of actual damages or profits, whichever is  
4 greater, or statutory damages, and attorney's fees and costs incurred in this action  
5 pursuant to 15 U.S.C. § 1117(a) - (c).

6 **THIRD CLAIM FOR RELIEF**

7 (False Designation of Origin Under 15 U.S.C. § 1125(a))

8 55. Penthouse incorporates the allegations of each foregoing paragraph as  
9 though fully set forth herein.

10 56. The CALIGULA and OMNI Marks are distinctive of goods and  
11 services originating with Penthouse. The Defendants' unauthorized use of the  
12 CALIGULA and OMNI Marks, particularly when combined with references to Mr.  
13 Guccione and Penthouse, is likely to cause and, on information and belief, has  
14 actually caused confusion in the marketplace by creating the false and mistaken  
15 impression that Defendants' advertising, rental and sales of the *Caligula* motion  
16 picture, and distribution of the online Omni Reboot magazine, are affiliated,  
17 connected or associated with Penthouse, or that they originate with, or are sponsored  
18 or approved by Penthouse.

19 57. Defendants' use of the CALIGULA and OMNI Marks has caused and,  
20 if not enjoined, will continue to cause, irreparable and continuing harm to Penthouse  
21 in the diminution of their value and goodwill as trademarks, and in their impairment  
22 to serve as a trademarks, for which Penthouse has no adequate legal remedy.  
23 Accordingly, Penthouse is entitled to provisional, preliminary and permanent  
24 injunctive relief to compel cessation of all infringing and otherwise harmful  
25 conduct.

26 58. As a direct and proximate result of Defendants' wrongful conduct,  
27 Plaintiffs have been and will continue to be damaged by, without limitation, lost  
28 sales and diminution in the value of the CALIGULA and OMNI Marks and in its

1 reputation and goodwill, in an amount to be proven at trial.

2       59. Defendants' wrongful use of the CALIGULA and OMNI Marks is  
3 knowing, deliberate, willful, fraudulent, and without extenuating circumstances.  
4 Penthouse is therefore entitled to recover its actual damages and attorney's fees and  
5 costs incurred in this action, as well as Defendants' profits from their infringement  
6 of the CALIGULA and OMNI Marks.

7                                   **FOURTH CLAIM FOR RELIEF**

8                                   (Trademark Dilution Under 15 U.S.C. § 1125(c))

9       60. Penthouse incorporates the allegations of each foregoing paragraph as  
10 though fully set forth herein.

11       61. The CALIGULA and OMNI Marks are famous and distinctive in that  
12 they are widely recognized by the general consuming public as a designation of  
13 Penthouse as the source of the goods or services represented by the CALIGULA and  
14 OMNI Marks.

15       62. Defendants' use of the CALIGULA and OMNI Marks impairs the  
16 distinctiveness of the famous CALIGULA and OMNI Marks and, as such, causes  
17 dilution by blurring.

18       63. Defendants willfully intended to trade on the recognition and value of  
19 the CALIGULA and OMNI Marks.

20       64. Defendants' use of the CALIGULA and OMNI Marks has caused and,  
21 if not enjoined, will continue to cause, irreparable and continuing harm to Penthouse  
22 in the diminution of their value and goodwill as trademarks, and in their impairment  
23 to serve as a trademarks, for which Penthouse has no adequate legal remedy.  
24 Accordingly, Penthouse is entitled to provisional, preliminary and permanent  
25 injunctive relief to compel cessation of all infringing and otherwise harmful  
26 conduct.

27       65. Defendants' wrongful use of the CALIGULA and OMNI Marks  
28 commenced after October 6, 2006. Defendants' wrongful use of the CALIGULA

1 and OMNI Marks was and continues to be knowing, deliberate, willful, fraudulent,  
2 and without extenuating circumstances. Penthouse is therefore entitled to recover its  
3 damages, Defendants' profits, and Penthouse's attorneys' fees and costs of this  
4 action, pursuant to 15 U.S.C. § 1117(a).

5 66. Penthouse is further entitled to an order that all materials in the  
6 possession of the Defendant bearing the CALIGULA and OMNI Marks be delivered  
7 up and destroyed pursuant to 15 U.S.C. § 1118.

8 **FIFTH CLAIM FOR RELIEF**

9 (Common Law Trademark Infringement)

10 67. Penthouse incorporates the allegations of each foregoing paragraph as  
11 though fully set forth herein.

12 68. Defendants are using the CALIGULA Marks in commerce in  
13 connection with their advertising, rental and sale of copies of the *Caligula* motion  
14 picture. Defendants are using both the exact word that comprises the CALIGULA  
15 Marks, as well as references to Mr. Guccione and Penthouse.

16 69. Defendants are using the OMNI Marks in commerce in connection with  
17 their publication of the online Omni Reboot magazine. Defendants are using both  
18 the exact word that comprises the OMNI Marks, as well as references to Mr.  
19 Guccione and Penthouse.

20 70. Defendants never sought or received Penthouse's authorization to use  
21 the CALIGULA Marks or the OMNI Marks.

22 71. Defendants' use of the CALIGULA and OMNI Marks is likely to cause  
23 and/or has actually caused confusion in the marketplace by creating the false and  
24 mistaken impression that Defendants' advertising, sales and rentals of the *Caligula*  
25 motion picture, and their online publication of the Omni Reboot magazine, are being  
26 marketed are affiliated, connected or associated with Penthouse, or that they  
27 originate with, or are sponsored or approved by Penthouse.

28 72. Penthouse is informed and believes, and based thereon alleges, that

1 Defendants' purpose in using the CALIGULA and OMNI Marks was and is to  
 2 deceive, mislead and confuse customers and the public into believing that  
 3 Defendants' advertising, sales and rentals of the *Caligula* motion picture, and their  
 4 online publication of the Omni Reboot magazine, are affiliated, connected or  
 5 associated with Penthouse, or that they originate with, or are sponsored or approved  
 6 by Penthouse, and to trade on the substantial and historical fame, notoriety,  
 7 reputation and goodwill associated with the CALIGULA and OMNI Marks.

8 73. Defendants' use of the CALIGULA and OMNI Marks violates the  
 9 common law of the State of California.

10 74. Defendants' use of the CALIGULA and OMNI Marks has caused and,  
 11 if not enjoined, will continue to cause, irreparable and continuing harm to Penthouse  
 12 in the diminution of value and goodwill of the CALIGULA and OMNI Marks, and  
 13 in their impairment to serve as trademarks, for which Penthouse has no adequate  
 14 legal remedy. Accordingly, Penthouse is entitled to provisional, preliminary and  
 15 permanent injunctive relief to compel cessation of all infringing and otherwise  
 16 harmful conduct.

17 75. As a direct and proximate result of Defendants' wrongful conduct,  
 18 Penthouse has been and will continue to be damaged by, without limitation, loss of  
 19 profit, and diminution in the value of the CALIGULA and OMNI Marks and in its  
 20 reputation and goodwill, in an amount to be proven at trial.

## 21 **SIXTH CLAIM FOR RELIEF**

22 (Common Law Unfair Competition)

23 76. Penthouse incorporates the allegations of each foregoing paragraph as  
 24 though fully set forth herein.

25 77. Defendants' use of the CALIGULA and OMNI Marks has the effect of  
 26 passing off Defendants' advertising, sale and rental of the *Caligula* motion picture,  
 27 and their online publication of the Omni Reboot magazine and related sales  
 28 activities, as being produced, endorsed or authorized by Penthouse.

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2 78. Defendants' misconduct constitutes unfair competition in that it offends  
3 established public policy and is immoral, unethical, oppressive, unscrupulous and  
4 injurious to consumers.

5 79. As a direct and proximate result of Defendants' wrongful conduct,  
6 Penthouse has been and will continue to be damaged by, without limitation, loss of  
7 profit, and diminution in the value of the CALIGULA and OMNI Marks and in their  
8 reputation and goodwill, in an amount to be proven at trial.

9 80. The acts of unfair competition alleged herein were committed with  
10 oppression, fraud and malice. Specifically, Defendants used the CALIGULA and  
11 OMNI Marks with knowledge that Penthouse owns the exclusive right to such use.  
12 Defendants' continuing use of the CALIGULA and OMNI Marks was unauthorized  
13 and caused consumer confusion, resulting in continuing injury to Penthouse.

14 81. Penthouse requests the imposition of exemplary damages pursuant to  
15 California Civil Code § 3294.

16 **SEVENTH CLAIM FOR RELIEF**

17 (Unfair Competition in Violation of

18 California Business & Professions Code § 17200, *et seq.*)

19 82. Penthouse incorporates the allegations of each foregoing paragraph as  
20 though fully set forth herein.

21 83. Defendants' unauthorized use of the CALIGULA and OMNI Marks  
22 and copyrights constitutes unlawful, unfair or fraudulent business acts or practices  
23 within the meaning of California Business & Professions Code § 17200.

24 84. Defendants' wrongful conduct has caused and, if not enjoined, will  
25 continue to cause irreparable and continuing harm to Penthouse, for which it has no  
26 adequate legal remedy.

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2 **EIGHTH CLAIM FOR RELIEF**

3 (Trademark Dilution in Violation of

4 California Business & Professions Code § 14247, *et seq.*)

5 85. Penthouse incorporates the allegations of each foregoing paragraph as  
6 though fully set forth herein.

7 86. The CALIGULA and OMNI Marks are famous and distinctive in  
8 California in that they are widely recognized by the general consuming public of  
9 this state as a designation of Penthouse as the source of the goods or services  
10 represented by the CALIGULA and OMNI Marks.

11 87. Defendants began using the CALIGULA and OMNI Marks without  
12 authorization from Penthouse after the CALIGULA and OMNI Marks had become  
13 famous.

14 88. Defendants' unauthorized use of the CALIGULA and OMNI Marks is  
15 likely to cause dilution of the famous CALIGULA and OMNI Marks.

16 89. Defendants' unauthorized use of the CALIGULA and OMNI Marks  
17 has caused and, if not enjoined, will continue to cause irreparable and continuing  
18 harm to Penthouse, for which it has no adequate legal remedy.

19 90. Defendants' dilution of the CALIGULA and OMNI Marks was willful,  
20 as evidenced by their continuing use of the CALIGULA and OMNI Marks after  
21 being advised of Penthouse's exclusive trademark rights, entitling Penthouse to an  
22 award of up to three times Defendants' profits from, and up to three times all  
23 damages suffered by reason of Defendants' wrongful use of the CALIGULA and  
24 OMNI Marks, pursuant to Sections 14247(b) and 14250 of the California Business  
25 & Professions Code.

26 **NINTH CLAIM FOR RELIEF**

27 (Declaratory Relief)

28 91. Penthouse incorporates the allegations of each foregoing paragraph as

1 though fully set forth herein.

2 92. This is an action for declaratory judgment of the Penthouse's priority of  
3 right as to the OMNI Marks pursuant to the Lanham Act, 15 U.S.C. § 1057(c).

4 93. An actual and justiciable controversy exists between Penthouse and  
5 Defendant Jerrick Ventures LLC regarding the parties' respective rights in regards to  
6 the OMNI Marks, as evidenced by Jerrick Ventures LLC's filing of a Petition for  
7 Cancellation of a registered OMNI Mark (Cancellation No. 92063829) (the  
8 "Cancellation"),

9 94. The registrant of the OMNI Mark that Jerrick Ventures LLC seeks to  
10 cancel filed an intent-to-use application with the United States Patent and  
11 Trademark Office on or about June 6, 2012. The OMNI Mark was registered on the  
12 Principle Register on April 5, 2016 (Reg. No. 4,932,689). All of the OMNI Marks  
13 were subsequently assigned to Penthouse, along with all of the goodwill associated  
14 with them.

15 95. In its Cancellation, Jerrick Ventures LLC admits that it did not start  
16 using the OMNI or OMNI REBOOT marks in commerce until in or about August  
17 2013. Jerrick Ventures LLC further admits that it did not file an application to  
18 register the purported OMNI REBOOT trademark until June 27, 2013.

19 96. Jerrick Ventures LLC contends in the Cancellation that the OMNI  
20 Mark should be cancelled because (a) there is a likelihood of confusion between the  
21 OMNI and OMNI REBOOT marks, (b) the registrant of the OMNI Mark had no  
22 bona fide intent to use the OMNI Mark in commerce at the time she filed her intent-  
23 to-use application, and (c) Jerrick Ventures LLC obtained the right to use the OMNI  
24 Mark and all of the goodwill associated therewith from the Estate of Bob Guccione.

25 97. Penthouse denies the above-referenced contentions of Jerrick Ventures  
26 LLC in the Cancellation and contends, and seeks this Court's declaration, that the  
27 registrant's filing of the intent-to-use application on June 6, 2012, conferred a  
28 priority of right superior to any rights of Jerrick Ventures LLC in any purported

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2 OMNI REBOOT trademark and that the Cancellation should be dismissed with  
3 prejudice.

4 **TENTH CLAIM FOR RELIEF**

5 (False Advertising in Violation of California

6 Business and Professions Code § 17500, *et seq.*)

7 98. Penthouse incorporates the allegations of each foregoing paragraph as  
8 though fully set forth herein.

9 99. Defendants have disseminated press releases and other online  
10 publications falsely indicating or stating that they are the owners of the OMNI and/  
11 or CALIGULA Marks and copyrights in an effort to make sales of copies of the  
12 *Caligula* motion picture, the OMNI magazines, memorabilia, and other goods.

13 100. Defendants know that they do not own the OMNI and CALIGULA  
14 Marks or copyrights. Not only have they not been assigned any such copyrights or  
15 trademarks, but the USPTO expressly refused to register Defendants' purported  
16 OMNI REBOOT mark due to the prior registration of one of the OMNI Marks, and  
17 Penthouse has notified Defendants of their infringement, including by way of its  
18 September 2013 cease and desist letter to Defendants GC and Frommer.

19 101. Defendants' false statements as to their ownership of the OMNI and  
20 CALIGULA Marks and copyrights are causing consumers to purchase copies of the  
21 OMNI magazine and *Caligula* motion picture from Defendants, instead of from  
22 Penthouse, the rightful owner of the intellectual property rights.

23 102. Defendants' conduct constitutes false advertising in violation of  
24 California Business and Professions Code § 17500, *et seq.*

25 103. As a direct and proximate result of Defendants' false advertising,  
26 Penthouse has been and will continue to be damaged by, without limitation, loss of  
27 profit, and diminution in the value of the CALIGULA and OMNI Marks and in its  
28 reputation and goodwill, in an amount to be proven at trial. If not enjoined,

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2 Defendants' false advertising will continue to cause irreparable and continuing harm  
3 to Penthouse, for which it has no adequate legal remedy.

4 **ELEVENTH CLAIM FOR RELIEF**

5 (Unjust Enrichment)

6 104. Penthouse incorporates the allegations of each foregoing paragraph as  
7 though fully set forth herein.

8 105. Through their wrongful and willful use of Penthouse's intellectual  
9 property, Defendants have received various benefits, including revenues generated  
10 by the publication and distribution of the *Caligula* motion picture and the OMNI  
11 Magazine, as well as press, media and consumer attention to their unauthorized  
12 activities. Defendants have unjustly retained all such benefits at the expense of  
13 Penthouse and have been unjustly enriched.

14 106. As a direct and proximate result of Defendants' unjust retention of the  
15 benefits they have received from their use of Penthouse's intellectual property,  
16 Penthouse has been and will continue to be damaged by, without limitation, loss of  
17 profit, and diminution in the value of the CALIGULA and OMNI Marks and in its  
18 reputation and goodwill, in an amount to be proven at trial, for which it is entitled to  
19 restitution.

20

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Penthouse prays for relief as follows:

- 23 1. The damages sustained by Penthouse and Defendants' profits;
- 24 2. Statutory damages pursuant to 17 U.S.C. § 504;
- 25 3. Treble damages for use of a counterfeit trademark pursuant to 15  
26 U.S.C. § 1117(b);
- 27 4. Punitive damages;
- 28 5. Injunctive relief prohibiting Defendants from any future unauthorized

1 use of Penthouse's property that is the subject of this lawsuit;

2 6. An order that all materials in the possession of the Defendants bearing  
3 the CALIGULA and OMNI Marks be delivered up and destroyed;

4 7. A judicial declaration that the registrant's filing of the intent-to-use  
5 application on June 6, 2012, conferred a priority of right superior to any rights of  
6 Jerrick Ventures LLC in any purported OMNI REBOOT trademark and that the  
7 Cancellation should be dismissed with prejudice.

8 8. Penthouse's costs in this action and reasonable attorney's fees and  
9 expenses;

10 9. Prejudgment interest; and

11 10. For such additional and further relief as this Court deems just and  
12 proper.

13  
14 Dated: December 11, 2017 SEDGWICK LLP

15  
16 By: /s/ Caroline H. Mankey

17 Caroline H. Mankey  
18 Attorneys for Plaintiffs  
19 PENTHOUSE GLOBAL MEDIA, INC.  
20 and GENERAL MEDIA  
21 COMMUNICATIONS, INC.  
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**DEMAND FOR JURY TRIAL**

Plaintiffs Penthouse Global Media, Inc. and General Media Communications, Inc. hereby demand a trial by jury on all issues triable by jury.

Dated: December 11, 2017 SEDGWICK LLP

By: /s/ Caroline H. Mankey

Caroline H. Mankey  
Attorneys for Plaintiff  
PENTHOUSE GLOBAL DIGITAL INC.  
and GENERAL MEDIA  
COMMUNICATIONS, INC.